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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHIN TORIGOE and TAKASHI NISHI

Appeal 2009-005686
Application 10/720,690
Technology Center 2400

Decided: March 22, 2010

Before MAHSHID D. SAADAT, CARLA M. KRIVAK, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 2-5, 7-11, 13-16, and 18-23. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' disclosure relates to an update notification method and device for notifying that a web page has been updated (Spec. 1:6-8). The instant claims are directed to a device and methods which provide update notifications that allow the user to easily determine whether information

meaningful to the user on the updated web page has been changed (Spec. 2:12-17).

Independent claim 7 is illustrative of the invention and reads as follows:

7. An update notification device for repeatedly accessing at least one web site identifiable with a preset address and outputting a notification message if any web page has been updated in the at least one web site, the device comprising:
 - updated data extracting means for extracting updated data from an updated web page;
 - notification-receiver's address holding means for holding the address of a user terminal for receiving a notification message with respect to each at least one web site with an updated web page;
 - updated data output means for adding, to the notification message, at least one of a header of the updated data, at least some of the updated data, and information about the address of the updated web page, the updated data output means sending the notification message to the address of the user terminal, wherein the notification-receiver's address holding means further has means for holding at least one keyword with respect to the address of the user terminal, and
 - wherein the updated data extracting means has means for removing a differential information piece from the updated data when the differential information piece does not include the held keyword, the differential information piece representing differences between old and new web page data.

The Examiner relies on the following prior art references to show unpatentability:

Freivald	5,898,836	Apr. 27, 1999
Jellum	6,915,482 B2	Jul. 5, 2005 (filed Mar. 28, 2001)

Claims 2-5, 7-11, 13-16, and 18-23 stand rejected under 35 U.S.C. § 103(a) as being obvious over Freivald and Jellum.¹

ISSUES

Appellants argue that an ordinarily skilled person who wanted to improve Freivald's system would not have been interested in Jellum's keywords, as proposed by the Examiner in the rejection (App. Br. 9-10). More specifically, Appellants argue that any information about a keyword contained in a web page would not be preserved when sections are converted to a checksum (App. Br. 10; Reply Br. 1-2). Per claims 3 and 14, Appellants argue that the combination of Freivald and Jellum would not have led one to condense updated data to a main passage if differences between old and new pages are large (App. Br. 11). Per claims 8 and 19, Appellants argue that the ranking disclosed in those claims is not taught or suggested by the cited references (App. Br. 11-12; Reply Br. 2).

The Examiner finds that combining the different methodologies of Freivald and Jellum would allow for more precise notification of a changed document, and would check to see whether a keyword is present in the segment (Ans. 7-8). In response to Appellants' arguments against the rejection of the dependent claims, the Examiner's response is that a user can set preferences so that changes affecting less than 10% of the document are not reported at all, and that Freivald ranks pages based on percentages with

¹ We note that claim 2 is presently listed as being dependent on claim 1, which has been cancelled (App. Br. 2, Claims Appendix). We assume that the intent was to have claim 2 depend from claim 7, after the cancellation of claim 1, and we treat claim 2 as having such dependence herein.

mismatched checksums, which render the claimed limitations obvious (Ans. 8-10).

Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See 37 C.F.R. § 41.37(c)(1)(vii).*

Thus, the issue arising from the respective positions of Appellants and the Examiner is:

Would one of ordinary skill in the art have combined Freivald and Jellum to teach or suggest all of the elements recited in the claims 2-5, 7-11, 13-16, and 18-23?

FINDINGS OF FACT

1. The instant Specification details an update notification method and device for notifying that a web page has been updated, and which provide update notifications that allow the user to easily determine whether information meaningful to the user on the updated web page has been changed (Spec. 1:6-8; 2:12-17).

2. Freivald is directed to a change-detection tool where a user registers a web page to be monitored and checksums for sections thereof are compared to determine whether alterations have been made (Abs.). The system stores the checksums (CRCs) and the user's email address in a database, and sends the user a notification email when changes have occurred, which may include the revised file (col. 6, ll. 20-45).

3. Freivald also details that in addition to reporting mere changes, the percentage of change of the overall document can be reported, with an

alternative percent change threshold for reporting disclosed. For multiple pages being reported, a combined report may be generated which ranks the changed pages based on the percentage of sections with mismatching CRCs (col. 12, ll. 23-67).

4. Jellum discloses a system allowing a subscribing user to monitor changes to web sites (Abs.). Optionally, a keyword presented by the user is checked to see if it is contained in the change to a site (col. 9, ll. 27-37).

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

KSR disapproved a rigid approach to obviousness (i.e., an analysis limited to lack of teaching, suggestion, or motivation). *KSR*, 550 U.S. 398 at 419 (“The obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents.”)

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning,

in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

ANALYSIS

Appellants argue that an ordinarily skilled person who wanted to improve Freivald's system would not have been interested in Jellum's keywords, as proposed by the Examiner in the rejection (App. Br. 9-10). More specifically, Appellants argue that any information about a keyword contained in a web page would not be preserved when sections are converted to a checksum (App. Br. 10; Reply Br. 1-2). The Examiner finds that combining the different methodologies of Freivald and Jellum would allow for more precise notification of a changed document, and would check to see whether a keyword is present in the segment (Ans. 7-8). We agree with the Examiner.

Appellants' conception of the combination would have us accept that any keyword information would be lost when a section is reduced to a checksum (Reply Br. 2). However, we do not necessarily find this to be the case. The Examiner discusses the process of verification of results (Ans. 8), but we find it equally logical that Freivald's checksum comparison (FF 2) could be used first to determine if a change has occurred and then Jellums' keyword process (FF 4) could further determine if a specific type of change (i.e., keyword) has occurred. Contrary to Appellants' position, we do not find the methodologies to be necessarily opposed. As such, we do not find Appellants' arguments, as to why Freivald and Jellum would not have been combined, to be compelling.

Per claims 3 and 14, Appellants argue that the combination of Freivald and Jellum would not have led one to condense updated data to a main passage if differences between old and new pages are large (App. Br. 11). The Examiner finds that a user can set preferences so that changes affecting less than 10% of the document are not reported at all, which meets the scope of the claimed limitations (Ans. 8-9). We agree with the Examiner.

As the Examiner has noted, the changed portions in Freivald can be highlighted in the document and attached to the emailed change notice (Ans. 9; FF 2). This taken with the percentage change feature of Freivald (FF 3) is analogous to the subject matter recited in claims 3 and 14, namely converting to a main passage when the change portion is greater than a threshold. As such, we do not find Appellants' arguments to be compelling.

Per claims 8 and 19, Appellants argue that the ranking disclosed in those claims is not taught or suggested by the cited references (App. Br. 11-12; Reply Br. 2). The Examiner finds that Freivald ranks pages based on percentages with mismatched checksums, which renders the claimed limitations obvious. We agree with the Examiner.

The Examiner states: “[w]hen a user registers many web-page documents, a combined report could be generated which ranks the changed pages based on the percentage of sections with mismatching CRC's,” citing Freivald (Ans. 9; FF 3). While Freivald ranks sections based on mismatched CRCs and not keywords, we can find no reason that the combination of Freivald and Jellum would not also provide such rankings based on keywords, based on the system discussed *supra*. As such, we do not find Appellants' arguments to be compelling.

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CONCLUSION

The decision of the Examiner rejecting claims 2-5, 7-11, 13-16, and 18-23 under U.S.C. § 103(a) as being obvious over Freivald and Jellum is affirmed.

DECISION

The Examiner's rejection of claims 2-5, 7-11, 13-16, and 18-23 before us on appeal is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

ack

cc:

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